4866/06

Filed on 14/11/06
by Shri A. K. Prasad Advocate
R. & D. R. (J) 14/11/06

(3)

Single Bench

IN THE HIGH COURT OF CHHATTSIGARH AT BILASPUR

Cr.M.P. No. 160 /2006

PETITIONER PROPOSED ACCUSED : Anguri Devi W/o Ved Prakash, age 60 years, Caste-Agrawal, r/o Ludeg, P.S. Patthalgaon, District Jashpur, C.G.

VERSUS

RESPONDENTS : 1. The State of Chhattisgarh, through District Magistrate, Jashpur, C.G.

PROSECUTION

2. Rajendra Prasad Agrawal s/o Ramchandra Agrawal, aged about 52 years, r/o Patthalgaon, District Jashpur, C.G.

COMPLAINANT

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PETITION UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE AGAINST THE ORDER DATED 31.08.2006 PASSED IN CRIMINAL REVISION NO. 20/2005 BY THE ADDITIONAL SESSIONS JUDGE, JASHPUR, DISTRICT JASHPUR, C.G. ARISING OUT OF ORDER DATED 02.08.2005 PASSED IN CRIMINAL CASE NO. 113/2003 BY THE CHIEF JUDICIAL MAGISTRATE, JASHPUR, DISTRICT JASHPUR, C.G. BY WHICH APPLICATION UNDER SECTION 319 Cr.P.C. FILED BY THE PROSECUTION FOR ADDING THE PETITIONER AS AN ACCUSED HAS BEEN ALLOWED.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R. 64

मामला क्रमांक ..... Cr.M.P. No. 160 of **सन् 200** 6 23.11.06

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23-11-2006

Shri A.K. Prasad, learned counsel for the applicant.

Shri Sanjay S. Agrawal, Govt. Advocate for the State.

At the request of the learned counsel for the parties, this Cr.M.P. No. 160/2006 is heard finally at the stage of admission.

This Cr.M.P. No. 160/2006 is directed against the order dated 31.8.2006 passed by the Addl. Sessions Judge, Jashpur in criminal revision No. 20/2005 affirming the order dated 2.8.2005 passed by the Chief Judicial Magistrate, Jashpur in criminal case No. 113/2003 whereby the Chief Judicial Magistrate in exercise of powers conferred under Section 319 of Cr.P.C. ordered impleading Anguri Devi, the applicant herein as an accused, upon an application filed by the D.P.O. on 14.7.2005.

Brief facts are that on 7.10.2002, one Rajendra Prasad Agrawal lodged the F.I.R. in P.S. Patthalgaon against Harkesh, Dinesh, Rakesh and the present applicant Anguri Devi. In the said F.I.R., it has been clearly mentioned that Anguri Devi participated in the assault on Rajendra Prasad Agrawal and was present at the time of occurrence. The presence of Anguri Devi at the scene of occurrence is also borne out from the case diary statement of Gopi Ram though he stated that she was present but did not participate in the commission of crime. In his testimony, Rajendra Prasad Agrawal PW-1 deposed in para 2 that during the occurrence, Anguri Devi came to the spot, caught hold of his right hand while Dinesh caught hold of his left hand and thereafter Rakesh assaulted him by a 'lathi'. This statement was wholly unrebutted in

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मामला क्रमांक ····· Cr.M.P. No.160 of 05 ····· सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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cross-examination. Not a single question was asked to Rajendra Prasad Agrawal to show that Anguri Devi was not present at the scene of occurrence.

On this premises, upon an application filed by the D.P.O on 14.7.2005, learned Chief Judicial Magistrate passed on order dated 2.8.2005 impleading Anguri Devi as an accused in exercise of powers under Section 319 of Cr.P.C.

Learned counsel for the applicant submitted that the impugned order is unsustainable in law because after culmination of investigation, the Police, on the basis of statement of Gopi Ram, came to the conclusion that Anguri Devi did not participate in the commission of crime and therefore, she was not arrayed as an accused. On this premise it was argued that the impleading of Anguri Devi as an accused merely on the basis of the statement of Rajendra Prasad Agrawal was wholly contrary to law and in excess of jurisdiction vested in the Chief Judicial Magistrate under Section 319 of Cr.P.C. On the other hand, Shri Sanjay S. Agrawal argued in support of the impugned judgment.

Having heard the rival submissions, I am of the considered opinion that this Cr.M.P. is devoid of any merit. It was held by the Apex Court in para 9 of *Girish Yadav and Others Vs. State of M.P.* **A.I.R. 1996 Supreme Court-3098:-**

> "*Once it is found that the FIR was promptly lodged after the incident which sets in motion the Police machinery which started investigation on spot immediately thereafter, it must be held that the contents of the FIR would reflect the first hand account of what*

P.T.O.

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मामला क्रमांक ..... Cr. M.P. No. 160 of **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	had actually happened on spot and who were responsible for the offence in question". Viewing the facts of the present case in the above perspective, it is seen that the name of Anguri Devi was mentioned by Rajendra Prasad Agrawal in the prompt F.I.R. lodged by him on 7.10.2002. It showed the complicity of Anguri Devi in the commission of crime. Later on in his testimony before the trial Court, he again mentioned that Anguri Devi participated in the commission of crime and held his right hand while Rakesh assaulted him with a 'lathi'. In cross-examination, no question was asked regarding the absence of Anguri Devi from the scene of occurrence. In this view of the matter, since the name of Anguri Devi was mentioned by Rajendra Prasad Agrawal in the prompt F.I.R. lodged and this fact was duly corroborated by his unrebutted testimony in Court, it cannot be said that the learned Addl. Sessions Judge, Jashpur acted with material irregularity or committed any manifest error of law in affirming the order of impleading the applicant as an accused under Section 319 of Cr.P.C. There is absolutely nothing on record to suggest that the Courts below have acted in excess of the jurisdiction vested in them. In this view of the matter, this Cr.M.P. being devoid of any merit is dismissed at the stage of admission. Accordingly, M.Cr.P. No. 2373/2006 for grant of stay is also dismissed. **Sd-/** **Dilip Raosaheb Deshmukh** **Judge**	

Priya

P.T.O.